

U.S. DISTRICT COURT

NOV 2 1892

W. E. STANG

CLERK

Supreme Court of the United States

THE UNITED STATES OF AMERICA,
owner of the steamships "Clio", "Moose-
bee", "Fort Logan", and "Morganza", *et al.*,

against

AMOS D. CARVER and JOSEPH B. MOR-
RELL, co-partners doing business under
the firm name and style of Baker, Carver
and Morrell.

No. 408.
OCTOBER
TERM 1892.

MOTION TO ADVANCE.

E. CURTIS ROUSE,
Counsel for Respondents.

HOWELL & ROUSE,
Printers.

SUPREME COURT OF THE UNITED STATES.

No. 402; OCTOBER TERM 1922.

THE UNITED STATES OF AMERICA, OWNER OF THE STEAMSHIPS "CLIO," "MOOSEABEE," "FORT LOGAN," and "MORGANZA," *et al.*,

against

MOTION TO
ADVANCE.

AMOS D. CARVER AND JOSEPH B. MORRELL, copartners doing business under the firm name and style of BAKER, CARVER AND MORRELL.

Sirs:

PLEASE TAKE NOTICE that a motion will be made at a Session of this Court, to be held at the Capitol, Washington, D. C., on the 13th day of November, 1922, at the opening of Court on that day or as soon thereafter as counsel may be heard for an order advancing this case for argument with the case of *Colonial Beach Co. vs. Quemahoning Coal Co.*, (In Re S. S. *St. John's*), No. 109, October Term 1922, or, in the alternative, with the argument of the case of *Blamberg Bros. vs. The United States of America*, No. 165, October Term 1922, and for

such other and further relief as to the Court may seem just.

Dated, New York, November 3rd, 1922.

Yours, &c.,

E. CURTIS ROUSE,
CROWELL & ROUSE,
Proctors for Appellees,
Amos D. Carver, et al.,
24 Broad Street,
Borough of Manhattan,
New York City.

To:

WILLIAM HAYWARD, United States Atty.,
45 Broadway,
Borough of Manhattan, New York City.

Hon. JAMES M. BECK, Solicitor General of the United
States,
Department of Justice, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

No. 402; OCTOBER TERM 1922.

THE UNITED STATES OF AMERICA, OWNER OF THE STEAMSHIPS "CLIO," "MOOSEABEE," "FOET LOGAN," and "MORGANZA," *et al.*,

against

AMOS D. CARVER AND JOSEPH B. MORRELL, copartners doing business under the firm name and style of BAKER, CARVER AND MORRELL.

NOW come AMOS D. CARVER and JOSEPH B. MORRELL, copartners doing business under the firm name and style of Baker, Carver & Morrell, libelants-appellees, herein, and move this Court under Section 8 of Rule 26 to advance this cause for argument with the case of the *Colonial Beach Co. vs. Quemahoning Coal Co. (In Re S. S. "St. John's")*, No. 109, October Term 1922, or, in the alternative, with the case of *Blamberg Bros. vs. United States of America*, No. 165, October Term 1922, with which, it is clearly connected in the points involved.

This cause is before this Court upon four questions certified by the United States Circuit Court of Appeals for the Second Circuit.

This suit was instituted to recover for supplies furnished to the Steamships *Clio* and *Morganza* upon the orders of the company operating these steamers. The

libellants were represented by their salesman who made no inquiry as to purchasers' title to or interest in the vessels, but relied solely upon the Act of Congress, approved June 23rd, 1910, entitled—"An Act Relating to Liens on Vessels for Repairs and Supplies," etc., as giving a lien. When suit was instituted, it developed that the United States of America was owner of record of the vessels, and that the authorities ordering the supplies were operating the vessels under a Government form charter purchase agreement containing clauses purporting to provide that such charterers, and not the ship, should pay for such supplies and that they should not, and could not, encumber the vessel with a lien therefor. These charter provisions were offered as a defense in this suit, but such defense was overruled, the Court holding, in substance, that there was no duty on a supplyman to inquire as to charters and their terms. An appeal was taken by the United States to the Circuit Court of Appeals, which thereupon certified two questions on this phase of the case—namely:

"(1) Would a maritime lien for necessities or supplies have arisen as against *Clio*, had that vessel been privately owned?

(2) Would a maritime lien for necessities or supplies have arisen as against *Morganza*, had that vessel been privately owned?"

These are precisely the questions presented in the *St. John's* case above referred to, now on the Calendar of this Court upon a writ of *certiorari*, and Number 109 October Term. This S. S. *St. John's* case arises upon an almost identical state of facts.

In both cases the respective appellants contend that the decisions in *The Kate*, 164 U. S. 458, and *The Valencia*, 165 U. S. 264, must be applied by reason of the language used by this Court in *Piedmont Coal Co. vs. Seaboard Fisheries Co.*, 254 U. S. 1, whereas the respective appellees contend, and the lower Court has held, that the contrary is true, based on the refusal by this court of the writ of *certiorari* in *The Oceana* (sub-nom. *Morse D. D. & R. Co. vs. Conron Bros. Co.*), 245 U. S. 656.

This suit was instituted against the United States of America as owner of the Steamships *Clio* and *Morganza* under the permission given by the Act of Congress, approved March 9th, 1920, entitled—"An Act Authorizing Suits Against the United States in Admiralty." The appellant interposed as a defense that the statute did not permit suits against the Government for claims such as this. This defense was overruled, and the statute construed to apply. On the appeal, this construction was questioned by the United States. The Court of Appeals certified the following two questions on this phase of the case:—

"(3) Is the United States liable for the amount of what would have been a lien, had the vessel affected been privately owned?"

(4) Is the United States liable for the personal indebtedness of State S. S. Corporation, in respect of supplies and necessities furnished to a vessel, in respect of which no maritime lien would have arisen, had such vessel been privately owned?"

So far as petitioners have been able to ascertain, this is the first case to come before this Court for a construction of this portion of the Suits in Admiralty Act.

The same Act is, however, before this Court in the case of *Blamberg Bros. vs. United States* for construction as to the *venue* provisions.

Petitioners are advised that there are a great many cases pending in this and other Circuits, decisions as to which have been delayed pending the decision of this Court in the present case. The questions here presented by the combination of the issues under the Maritime Lien Act and the Suits in Admiralty Act are of such public interest and grave importance that, as petitioners have been informed, there will be at least one application on behalf of other interested parties for leave to file briefs *amicus curiae*.

It is essential that, if possible, a speedy determination of the rights of the parties and the state of the law be obtained.

The present case is Number 409 upon the present Calendar and cannot, under normal conditions, be reached for argument before the end of the present term or early next term.

Your petitioners are advised that both the *S. S. St. John's* and the *Blamberg Bros. vs. United States* cases will, in all probability, be reached for argument in their regular course during the November or December Session. In fact, the case of *Blamberg Bros. vs. United States* has been set for argument on December 4th, 1922.

Your petitioners are informed that their counsel has conferred with the Advocates for the Government in respect to advancing this present case for argument with the *St. John's*, and have been led to believe that such disposition of this motion will be acceptable to them. In fact, counsel has been advised that an application will be made, during the week of November 13th, to have the argument in the *St. John's* case deferred to December 4th, in order to permit of the advancement of the present case and preparation of it for argument with the *St. John's* case.

Because of the similarity in the questions raised by this case with those both in the *St. John's* and the *Blamberg Bros.* cases, it would seem highly desirable that all three cases be argued on the same day.

WHEREFORE, petitioners pray that this case of *United States vs. Carver*, Number 402, be advanced upon the Calendar of this Court for argument with the case of *Colonial Beach Co. vs. Quemahoning Coal Co. (In Re S. S. St. John's)*, Number 109, or, in the alternative, that it be advanced for argument with the case of *Blamberg Bros. vs. United States*, Number 165.

Respectfully submitted,

E. CURTIS ROUSE,
Counsel for Libelants-Appellees,
Amos D. Carver, et al.